

## **INFO PROVIDED BY THE APPELLANT**

Group 1



**City of Austin Watershed Protection and Development Review Department**  
**505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835**

**SITE PLAN APPEAL**

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Land Use Commission (ZAP or PC), or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPC-2008-0594A

DATE APPEAL FILED 4/22/09

PROJECT NAME LaBare Austin

YOUR NAME Damon Howze

PROJECT ADDRESS 6406 N IH 35 SVD SB,  
Suite 1100

SIGNATURE Damon Howze

YOUR ADDRESS 7507 Northcrest Blvd  
Austin, TX 78752

APPLICANT'S NAME Lincoln Dunhill Holdings

YOUR PHONE NO. (512) 791-2328 WORK

CITY CONTACT Lynda Courtney

(512) 371-3754 HOME

**INTERESTED PARTY STATUS:** Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Land Use Commission public hearing on (date) 4/14/09
- ☐ I communicated my interest in writing to the Director or Land Use Commission prior to the decision (attach copy of dated correspondence).

**In addition to the above criteria,** I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☒ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

**DECISION TO BE APPEALED\*:** (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☐ Land Use Commission Approval/Disapproval of a Site Plan
- ☐ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision
- ☒ Other: Conditional use permit

Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: 4/14/09

\*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

**STATEMENT:** Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

Neighbors object to the proposed use. 2 schools and another  
adult-oriented business exist within 1200 feet of proposed use; this  
violates the spirit of the code. See attached for evidence of detrimental impact  
related to applicable code. (Attach additional page if necessary.)

Applicable Code Section: Paragraph 25-5-145 Subsection D

P 25-5-145 <sup>Sub</sup> Section D

**STUDIES THAT SUPPORT THE ASSERTION THAT ADULT-ORIENTED BUSINESSES HURT ADJACENT COMMERCIAL USES: EACH STUDY HAS BEEN ACCEPTED AS VALID BY A STATE OR FEDERAL COURT**

In the case of Richland Bookmart, Inc. v. Nichols, 137 F.3d 435, 440, the 6<sup>th</sup> Circuit Court (1998) asserted that Reducing crime ... and preserving the aesthetic **and commercial** character of the neighborhoods surrounding adult establishments is a 'substantial government interest.'").

A LAND USE STUDY done in **AUSTIN TEXAS**, dated May 19, 1986 examined crime rates, property values, and trade area characteristics. The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and with similar characteristics). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or lending firms (nearly half responded). For trade area characteristics, three businesses were observed on a weekend night to determine customer addresses.

The results of the study include:

**CRIME:** Sexually related crime ranged from 177-482% higher in the four study areas than city average. In the two study areas containing two sexually oriented businesses, the rate was 66% than in the study areas with one such businesses. All control areas had crime rates near the city average.

**REAL ESTATE:** 88% of the appraisers or lending firms said that a sexually oriented business within one block of a residential area decreases the value of the homes (33% said depreciation would be at least 20%). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve 90-95% loan to value financing more home buyers require. **Respondents also said commercial property is also negatively affected by such businesses.**

**TRADE AREA CHARACTERISTICS:** Of 81 license plates traced for owner address, only three lived within one mile of the sexually oriented business. 44% came from outside Austin.

**RECOMMENDATIONS:** 1) Sexually oriented businesses should be limited to highway or regionally-oriented zones; 2) **businesses should be dispersed to avoid concentration;** and 3) conditional use permits should be required for these businesses.

**LAND USE STUDY in Minneapolis, Minnesota 1980** concluded that concentrations of sexually oriented businesses have significant relationship to higher crime and **lower property values.**

**LAND USE STUDY: Garden Grove, California (1991)** Overwhelmingly, respondents said that an adult business within 200-500 feet of commercial property

**depreciates the property value.** The chief factor cited for the depreciation was the increased crime associated with adult businesses (note AOBs in Garden Grove do not serve alcohol.)

**LAND USE STUDY: New York, New York (1994)** found that **80% of surveyed real estate brokers reported that an adult entertainment use would have a negative impact upon the market value of property within 500 feet** and a majority indicated that the same would occur with 500 to 1000 feet. 80% of surveyed community organizations responded that adult entertainment uses negatively impact the community in some way, and almost 50% of surveyed businesses responded that they believed their business would be negatively affected. The study noted that the attitudinal data from the surveys are significant **even where the negative impacts are currently difficult to measure, since negative perceptions associated with an area can lead to disinvestment in residential neighborhoods and economic decline because of a tendency to avoid such shopping areas.**

**LAND USE STUDY: Oklahoma City Oklahoma (1986)** **75% of real estate appraisers surveyed said that an adult bookstore would negatively affect other businesses within one block.** Frequent problems cited by the appraisers included the attraction of undesirable clines and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and commercial rentals, and immediate area deterioration (trash, debris, vandalism.)

Summaries above taken from a summary of Land Studies and Crime Studies prepared by the City of Belenica California.

Nevada, Las Vegas: March 15, 1978

Among brokers and realtors, overwhelming majorities said that adult entertainment establishments had negative effects on the market value (82%), saleability/rentability (78%), and rental value (76%) of properties located near these establishments. **According to 81%, there is a decrease in the annual income of businesses in the vicinity of adult establishments.** Strong majorities reported that a concentration of adult businesses near other businesses (from under 500 feet to more than 1000 feet) has negative effects on market values, rental values, and rentability/saleability of residential property. Among surveyed homeowners and residents living near adult businesses, **the consensus was similar: adult establishments have a negative effect on the neighborhood, the business conditions (sales and profits) in the area (2-square block radius), and the value and appearance of homes in the vicinity (within 500 feet).**

The US Supreme Court in *Young v American MiniTheaters* (1976) and *City of Renton v Playtime theaters* (1986) has established that sexually oriented businesses have negative secondary effects and that cities can regulate these businesses on that basis. The Supreme Court reinforced that point in *Renton* and indicated that communities can rely on studies and experiences in other places as a basis for enacting and defending local legislation.

In a recent case involving **MALE DANCERS** the US Court of appeals 8<sup>th</sup> Circuit affirmed: "Once a city has decided to regulate adult entertainment to prevent its secondary effects, however, the city is not required to prove that a particular adult use creates secondary effects before regulating that use, so long as the city reasonably believes that the use is related to other uses that have been shown to cause secondary effects." *Bzaps v City of Mankato* 2001

#### STUDIES THAT SUPPORT THE ASSERTION THAT ADULT-ORIENTED BUSINESSES LEAD TO INCREASES IN CRIME IN THE SURROUNDING NEIGHBORHOODS: EACH STUDY HAS BEEN ACCEPTED AS VALID BY A STATE OR FEDERAL COURT

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**Other municipalities have relied on the Austin study, along with others, to craft their AOB ordinances and to defend them in court.**

**Toledo Ohio (2002)** While adult cabarets comprised only 20% of the businesses included in the crime study, they were involved in 44% of the total police calls. **The consultants concluded that adult entertainment establishments that feature live entertainment are likely to have the greatest adverse impact with respect to the number of incidents that require a police response.**

**LAND USE STUDY: Whittier, California (1978).** The city council looked at two residential areas for the time periods of 1970-73 (before sexually oriented businesses) and 1974-77 (after such businesses). **In the sexually oriented business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (malicious mischief up 700%; all assaults up 387%; prostitution up 300%). All types of theft (petty, grand, and auto), increased more than 120% each.**

**State of Minnesota Working Group (1989) concluded that “these studies, taken together, provide compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values.”**

**Phoenix Arizona 1979 crime study** On average, the number of property crimes was 43 percent greater in neighborhoods where sexually oriented businesses were located, and the number of violent crimes was 4 percent higher in those areas.

### **Colorado, Denver: January, 1998**

The team found that adult use businesses caused negative secondary impacts to nearby properties and neighborhoods, including **criminal activity, litter, noise, traffic problems and depreciation in property values.** The study notes that the litter generated by such businesses includes printed material containing pornography, used condoms, sex paraphernalia, and used syringes. The crimes, which were significantly higher around adult use businesses compared with the city as a whole, included disturbing the peace, public indecency, prostitution, drug-related crimes, and public indecency.

### **Environmental Research Group to the American Center for Law & Justice: March 31, 1996**

A national survey of real estate appraisers and lenders revealed that the placement of a sexually oriented business is generally an indicator of the decline of a community.

Florida, Manatee County: June, 1987

This report was conducted by the Manatee County Planning and Development Department.

They found that present zoning ordinance should be amended to add buffer requirements to provide distance from 1) residential districts, 2) churches, schools, child care facilities, and public recreation areas, and 3) other established adult businesses. In addition, the report recommended that there should be at least 500 feet of separation between an adult business and the nearest residential zone. **A 2000 foot buffer should be established for churches, schools, child care facilities, and recreation areas.** Adult businesses should be separated from one another by at least 1000'.

There are more studies available!